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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 13

Application Number: 09/745,098
Filing Date: December 20, 2000
Appellant(s): VILACHA ZANONI ET AL.

David C. Jenkins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 18, 2003.

Art Unit: 3727

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1, 13 and 14 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

Art Unit: 3727

2,099,056	FERNGREN	11-1937
3,497,098	MYER	2-1970

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Leenaards. This rejection is set forth in prior Office Action, Paper No. 8(paragraph #3).

Claim 13 is rejected under 35 U.S.C. 103 as being unpatentable over Leenaards in view of Ferngren. This rejection is set forth in prior Office Action, Paper No. 8(paragraph #5).

Claims 14-16 are rejected under 35 U.S.C. 103 as being unpatentable over Leenaards in view of Myer. This rejection is set forth in prior Office Action, Paper No. 8(paragraph #6).

(11) Response to Argument

With respect to appellant's arguments concerning the Leenaards '594, appellant argues that Leenaards does not teach the curved portion of the closure being the same shape as the mouth of the container prior to crimping of the crown closure onto the bottle and that the shape of the curved portion of the crown closure can not be the same shape as the crown closure or Leenaards must also accommodate the seal located between the crown closure and the bottle mouth. These arguments are incorrect. Leenaards, as shown in figures 2 and 5, teaches the crown closure having a curved portion that is the same shape as the mouth contour of the bottle prior to crimping.

Art Unit: 3727

While Leenaards does teach a seal located between the crown closure and bottle mouth, appellant also has a liner or seal 30 located therebetween. It would appear that if appellant's invention has a liner between the crown closure and the bottle while the curved portion of the crown closure is of the same shape as the mouth contour of the bottle, then the same would hold true for the curved portion of the crown closure of Leenaards and it would match the shape of the mouth contour of the bottle.

With respect to appellant's arguments concerning the combination of Leenaards '594 and Ferngren '056, appellant argues that there is no teaching or suggestion to combine. In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Leenaards teaches everything except for the bottle mouth having an upper and lower portion with a fulcrum therebetween. Ferngren teaches a bottle and closure wherein the bottle mouth has an upper and lower portion with a fulcrum therebetween. See figure 1. This arrangement improves the seal between the closure and the bottleneck. See page 2, right column, lines 5-17. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottle neck of Leenaards with an upper portion and a lower portion and a fulcrum therebetween as taught by Ferngren to

Art Unit: 3727

improve the seal between the closure and bottle. Appellant further argues that the closure of Ferngren being made of plastic and the metal crown closure of Leenaards are two different types of closures and therefore the teachings are not combinable. Ferngren is cited for the teaching of a fulcrum on a glass bottleneck and not the material used to make the closure.


With respect to appellant's arguments concerning the combination of Leenaards '594 and Myer '098, appellant argues that there is no teaching or suggestion to combine. In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Leenaards teaches all of the structure of appellant's crown closure, but does not method of forming the crown closure from a metal sheet by using a die press. This method of forming crown closure is old. Myer teaches forming crown closures from metal sheets by using a die press. Therefore, it would have been obvious to utilize this method to form the crown closure of Leenaards. Appellant further argues that the dimensions recited in claims 14-16 are not taught. Leenaards teaches these dimensions which result in the claimed sized closure. The diameter of the closure of Leenaards is between 20 and

Art Unit: 3727

40mm, while appellant claims the diameter is 1.4 inches. 1.4 inches is equal to 35.5mm. Therefore this limitation is taught by Leenaards.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Nathan J. Newhouse
Primary Examiner
Art Unit 3727

NJN

May 27, 2003

Conferees

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